MONTANA LEGISLATIVE HISTORY

Chapter 285 1983

Bill H 554 S _____ Original bill & history ____C

H. Committee on	Labor and Employment Relations		S. Committee on	Labor and Employment Relations	
Hearing Date(s)	Feb 08	✓C	Hearing Date(s)	Mar 08	✓C
	Feb 10	✓C		Mar 10	✓C
	_____	____C		_____	____C
	_____	____C		_____	____C
Date Out	Feb 10	✓C		Mar 10	✓C

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

REPRESENTATIVE DARKO closed. She said she had no objection to the suggested amendments.

Questions were asked by the committee.

Chairman Williams closed the hearing on HB 525 and opened the hearing on HB 554.

HOUSE BILL 554

REPRESENTATIVE RAMONA HOWE, District 58, chief sponsor, said this bill is at the request of the Human Rights Commission. She said the Maternity Leave Act is presently administered by the Department of Labor. She said violations of this act are often violations against the Sex Discrimination Act also and consequently a duplicate system exists. She said these duplications should be eliminated by placing the maternity leave functions under the Human Rights Commission.

ANNE MACINTYRE, Human Rights Commission, spoke in support and explained the need of this bill.

There were no other proponents or opponents.

REPRESENTATIVE HOWE closed. She said one further comment is that the Human Rights Commission could process these cases with existing staff at no extra cost.

Questions were asked by the committee.

Rep. Addy mentioned a case where the Department of Labor came up with a decision in 60 days where the Human Rights Commission took six months. He asked why. Ms. MacIntyre said not the same question was before the Commission. She said the Human Rights Commission have further authority to look more deeply into the problems.

Rep. Ellerd asked how many complaints in the period of a year. Ms. MacIntyre said 230 complaints approximately and about 80 percent are female.

Rep. Addy mentioned that a violation of the Maternity Leave Act is often a violation of the Civil Rights Act and the Human Rights Act, also, and is often tried in all three ways.

Rep. Seifert asked how many full time employees on the Human Rights Commission and the total budget. Ms. MacIntyre said 7 1/2 FTEs and a budget of $228,000. Rep. Seifert asked if they would need to add additional FTEs to handle this additional workload. Ms. MacIntyre said there is no fiscal note as most cases handled in the Labor Standards are already filed with their Commission and so they investigate them also.

Rep. Ellerd asked if the Department of Labor had any objections. Mr. Dick Kane, Labor Department, said they don't oppose the bill.

Rep. Ellerd asked if the reason for moving it is because the cases were not being handled correctly. Ms. MacIntyre said from what they have observed they are doing a fine job and the problem is the duplication. She said they get negative feedback from defending employers when they have to appear at two different administrative hearings, and also under the present law two reviews are needed.

Rep. Ellerd asked if there was any way this could be handled with one hearing. Ms. MacIntyre said the language of the Human Rights Act makes it illegal for an employer to discriminate on the basis of sex. She said if you discriminate against somebody because of pregnancy that is sex discrimination.

Rep. Addy asked if he hadn't read recently where the Human Rights Commission had to put their cases on hold because of lack of money. Ms. MacIntyre said that doesn't mean they are not handling the cases. She said they are using conciliation and resolving through investigation. Rep. Addy said the Human Rights Commission doesn't get the money they need. He asked if the Human Rights Commission receives this function would they make it a number one priority to get speedy action and could the bill be amended that way?

Chairman Williams closed the hearing on HB 554 and opened the hearing on HB 623.

HOUSE BILL 623

REPRESENTATIVE JERRY DRISCOLL, District 69, chief sponsor, said this is a bill prohibiting retaliation against an employee by an employer because the employee has filed a complaint or participated in a proceeding under law. Rep. Driscoll said he was not talking about normal employers but unscrupulous ones. He said the only thing an employee can do now in this situation is go to court, and this bill would provide some justice outside the courts.

WYATT L. FROST, Cement Workers, spoke in support and a copy of his testimony is Exhibit 4 of the minutes.

DON JUDGE, Montana State AFL-CIO, spoke in support and a copy of his testimony is Exhibit 5 of the minutes.

Mr. Blehm responded to a question that the Attorney General's opinion only spoke to general government power cities. He alluded to the possibiltiy that the others might not have to pay attention to this. He said it is the employees protection law that is being dealt with and it has never been tested or ruled on before. She said you could take the firemen and police out of 281.

EXECUTIVE ACTION

HOUSE BILL 525 Rep. Harper moved to amend title, line 7, following "BONA FIDE" to insert "COLLECTIVE BARGAINING AGREEMENT" and the same amendment on page 1, line 22 and again on line 15. This motion carried with Rep. Addy voting no. Rep. McCormick moved that HB 525 AS AMENDED DO PASS.

Rep. Addy said he opposed the amendment because the words bona fide seniority system come out of the regular employment discrimination law. In court cases and in federal regulations, amendment is not necessary and if you have a bona fide seniority system for employees, it is a nonaffirmative action bill. Any past discrimination is clarified into the system until replaced by attrition. He said it lends stability to the working place, but it limits the extent to which you can engage in affirmative action.

The question was called and the motion carried. Rep. Ellerd voted no and absent now were Reps. Bachini, Driscoll, Hannah, Jones, Seifert and Thoft. Rep. Ellerd said he voted no because he didn't understand the bill.

HOUSE BILL 554 Rep. Addy moved DO NOT PASS. He said he has a lot of frustration with the Human Rights Commission. He said the Department of Labor and Industry processes these complaints in sixty days and the Human Rights process takes six months to make an initial determination. He said it takes one and a half to two years before anyone has a right to go into district court. He said he realizes there might be overlapping processes that the employer said he has to live with. He said we would not be helping the employee to pass this.

Rep. Dozier asked if the bill is not passed will all the avenues still be open to the employee. Chairman Williams said it would close one avenue if we passed it and it would just go under the Human Rights Commission.

Chairman Williams asked if this would relieve the individual from hiring an attorney to get the job done. Rep. Addy said there would be an administrative hearing on both tracks but in and administrative procedure there is less need for an attorney.

Rep. Harper asked why it takes the Human Rights Commission so long. Rep. Addy said they hire their own staff and the hearing officer comes from the Attorney General's Office which limits their manpower being readily available. The scope of inquiry under the Department of Labor is much narrower. Human Rights has a broader inquiry. Human Rights has been very lenient towards employees and so employees are encouraged to file claims.

Chairman Williams said he was having a problem accepting his approach. Wouldn't it be better to turn this over to the Human Rights? Wouldn't this be more justifiable than doing it twice if they don't get the right answer? Rep. Addy said you can go both ways at once and this bill would only limit the alternatives.

Rep. Harper made a substitute motion of DO PASS. The motion carried with six voting yes, 5 no (Dozier, Assy, McCormick, Pavlovich, Smith) and six absent (Bachini, Driscoll, Hannah, Jones, Seifert and Thoft).

HOUSE BILL 568 Rep. Harper moved DO PASS. The motion carried unanimously with those present. There were the same absent as the previous vote.

Chairman Williams appointed the following subcommittee to look into House Bills 603 and 281: Rep. Dozier, Chairman, Rep. Miller and Rep. Farris.

HOUSE BILL 623 Rep. Harper moved DO PASS. Mr. Dick Kane, Department of Labor and Industry, said he doesn't know of any present remedy unless it falls under the federal act. He said a fellow out of a job doesn't have the money to file a civil suit.

Rep. Addy asked if there could be a codification interaction in this and Mr. Wright the researcher was going to check on that.

The notion carried with Reps. Ellerd and Miller voting no and absent were Rep.s Bachini, Driscoll, Hannah, Jones, Seifert, and Thoft.

The meeting adjourned at 2:25 p.m.

Respectfully submitted,

J. Melvin Williams

J. Melvin Williams

STANDING COMMITTEE REPORT

February 10, 19 83

MR. SPEAKER:

We, your committee on LABOR AND EMPLOYMENT RELATIONS

having had under consideration HOUSE Bill No. 554

First reading copy (White / Color)

A BILL FOR AN ACT ENTITLED: " AN ACT TO TRANSFER FUNCTIONS REGARDING MATERNITY LEAVE FROM THE COMMISSIONER OF LABOR AND INDUSTRY TO THE COMMISSION FOR HUMAN RIGHTS; AMENDING SECTION 39-7-203, MCA; REPEALING SECTIONS 39-7-201, 39-7-202, AND 39-7-205 THROUGH 39-7-209, MCA; AND PROVIDING AN EFFECTIVE DATE.

Respectfully report as follows: That HOUSE Bill No. 554

~~DO PASS~~

NEIL WILLIAMS Chairman.

STATE PUB. CO.
Helena, Mont.

Joe Thares, representing Mountain Bell, stated that they oppose House Bill No. 525. He stated that it creates problems for them with their management pension plan.

QUESTIONS FROM THE COMMITTEE ON HOUSE BILL NO. 525:

Senator Lynch: Hasn't the Supreme Court outlawed any discrimination because of age?

Anne MacIntyre: As the law exists, it prohibits mandatory retirement at any age.

Senator Keating: Why do we need this bill?

Anne MacIntyre: The language that is in this bill is in the government Fair Code Practices, but it is not in the Human Rights Act. The language is similar to language in the federal law.

At this point in the hearing, Anne MacIntyre presented a case involving Mary Dolan versus School District No. 10, Deer Lodge, Montana. This document is attached. (Exhibit No. 4)

Senator Lynch asked Mr. Allen if we weren't asking for a lot of court cases by putting this amendment in the bill.

Mr. Allen stated that everyone must retire at age 70 under federal law.

Staff Attorney, John MacMaster, orally submitted some suggested amendments at this point in the hearing.

LeRoy Schramm stated that the federal law is age 70, but the law does not force retirement--it allows it.

Representative Darko made closing comments in support of House Bill 525. She stated that the federal law and state law will never be the same, but will be more compatible if this bill makes it through the Committee.

If House Bill 525 passes Committee, Senator Chris Christiaens will carry the bill on the floor.

Chairman Aklestad called the hearing closed on House Bill No. 525.

CONSIDERATION OF HOUSE BILL NO. 554:

Chairman Aklestad introduced Representative Ramona Howe, sponsor of House Bill No. 554, to the Committee and Representative Howe presented the bill to the Committee.

House Bill No. 554 is an act to transfer functions regarding maternity leave from the Commissioner of Labor and Industry to the Commission for Human Rights.

Representative Howe stated that House Bill 525 was requested by the Human Rights Commission, and they are trying to eliminate the duplicate system for handling complaints, which would be a relief to taxpayers.

PROPONENTS OF HOUSE BILL NO. 554:

Anne MacIntyre, representing the Human Rights Commission, stated that they support House Bill No. 554. She feels that this bill provides benefit to employers.

OPPONENTS OF HOUSE BILL NO. 554: None were present at the hearing.

QUESTIONS FROM THE COMMITTEE:

Senator Keating: Do you want to delete the provisions for retaliation in section 4?

Anne MacIntyre: There is already a provision against retaliation in the Human Rights Commission so there would be a duplication.

Senator Gage asked about the repealed sections of the bill.

Dick Kane from the Labor Standards Division explained these sections to the Committee. They are procedural and the Human Rights Commission law has substantially the same procedure.

Senator Goodover: Mr. Kane, were you in favor of transferring this from Labor to Human Rights two years ago?

Dick Kane: I don't believe we were in favor of it at that time.

Senator Goodover: What makes this bill more palatable now than two years ago?

Dick Kane: There should be a remedy, but there is a duplication of effort in some cases.

Senator Aklestad: How many of these cases of complaints do you have where you have had a duplication of effort?

Anne MacIntyre: We haven't been able to identify how many duplications of effort there have been. I would say approximately one-half are heard in the Department of Labor as well as in the Human Rights Commission.

Senator Goodover: This bill didn't pass two years ago. What real problems have you had in the past two years?

Dick Kane: I am aware of at least two cases and there may be more.

Anne MacIntyre: From a recent perspective at least one case is pending in both the Department and the Commission. The Department's decision is not binding on the Commission.

Senator Goodover: Would this bill have eliminated these cases if it had been in effect?

Anne MacIntyre: Yes, it would have.

Senator Gage: If your Department was investigating both maternity and sex discrimination allegations is there a possibility that the fact that you would be handling both of those have an effect on your decision on either claim?

Anne MacIntyre: I don't think it would, not usually.

Senator Goodover: If you don't have the Department of Labor to consider and the decision goes to you where does the employer stand?

Anne MacIntyre: We would conduct our own investigation of the allegation.

Representative Howe made closing comments in support of House Bill 554 and urged its passage by the Committee.

If House Bill 554 passes Committee, Senator Chris Christiaens will carry the bill on the floor.

Chairman Aklestad called the hearing closed on House Bill No. 554.

CONSIDERATION OF HOUSE BILL NO. 270:

Chairman Aklestad ased Representative Jerry Driscoll, sponsor of House Bill No. 270, to present the bill to the Committee.

House Bill No. 270 is an act allowing a person who is temporarily totally disabled under Workers' Compensation laws to use wage credits from employment prior to the disability for purposes of unemployment benefits eligibility.

PROPONENTS OF HOUSE BILL NO. 270:

Susan Mohr, representing the Department of Labor, stated that they are in support of House Bill No. 270. She stated that this bill does not affect a lot of people, but it is an important bill for those that it does affect. The bill gives an option of going back to using the base period of when their disability occurred. She stated that a few other states have this similar provision in their law.

ACTION ON HOUSE BILL NO. 554:

Senator Blaylock moved that House Bill No. 554 Be Concurred In. On a Roll Call Vote, the Committee voted 5-3 that HOUSE BILL NO. 554 BE CONCURRED IN. The Roll Call Vote is attached.

ADJOURN: There being no further business before the Committee, the meeting was adjourned at 2:20 p.m.

Senator Gary C. Aklestad, Chairman

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STANDING COMMITTEE REPORT

March 10, 19 83

MR. PRESIDENT:

We, your committee on LABOR & EMPLOYMENT RELATIONS

having had under consideration HOUSE Bill No. 554

Howe (Christiaens)

Respectfully report as follows: That HOUSE Bill No. 554

BE CONCURRED IN

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STATE PUB. CO.
Helena, Mont.

SENATOR GARY C. AKLESTAD, Chairman.